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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALEJANDRO JORRO DE INZA, ADELAIDA ANTOLIN FERNANDEZ, and GERMAN SANCHIS GRAMAGE

Appeal 2015-005896
Application 12/815,561
Technology Center 1700

Before JEFFREY T. SMITH, ELIZABETH M. ROESEL, and MICHAEL G. McMANUS, *Administrative Patent Judges*.

McMANUS, *Administrative Patent Judge.*

DECISION ON APPEAL

The Examiner finally rejected claims 1, 2, and 6 of Application 12/815,561 under 35 U.S.C. § 102(b) as anticipated and claims 1–8 and 17 under 35 U.S.C. § 103(a) as obvious. Final Act. (July 2, 2014). Appellants[1] seek reversal of these rejections pursuant to 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6.

For the reasons set forth below, we AFFIRM.

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[1] Grupo Antolin Ingenieria, S.A., is identified as the real party in interest. Appeal Br. 2.

BACKGROUND

The present application generally relates to flock coatings for use in automobile interiors. Spec. 1. More specifically, it describes a flock coating having a decorative or informational motif formed by action of a laser beam projected on a portion of the flock layer. *Id.*

Claims 1 and 17 are representative of the pending claims and are reproduced below:

> 1. An inner flock coating for vehicles, said inner flock coating comprising:
>
> - a support,
>
> - an adhesive layer located at least over part of the support layer,
>
> - a flock layer formed by a number of fibres applied by flocking technology on at least one part of the adhesive layer, wherein the melting or combustion temperature of the fibres forming the flock layer is less than the degradation temperature of the adhesive forming the adhesive layer, and
>
> - an indicative, decorative, or indicative and decorative motif located on a visible surface of said inner flock coating, wherein at least part of the motif comprises a combination of at least two visually different areas, a first area formed by part of the flock layer where the flock layer is visible, and a second area formed by the adhesive layer where the adhesive layer is visible due to the elimination of part of the flock layer located on top of the adhesive layer due to an increase in temperature at said second area caused by action of a laser beam projected on that part of the flock layer, wherein said inner flock coating is in an assembly position inside a vehicle.
>
> 17. An inner flock coating for vehicles, said inner flock coating comprising:
>
> - a support,

> - an adhesive layer located at least over part of the support layer,
>
> - a flock layer formed by a number of fibres applied by flocking technology on at least one part of the adhesive layer, wherein the melting or combustion temperature of the fibres forming the flock layer is less than the degradation temperature of the adhesive forming the adhesive layer, and
>
> - an indicative, decorative, or indicative and decorative motif located on a visible surface of said inner flock coating, wherein at least part of the motif comprises a combination of at least two visually different areas, a first area formed by part of the flock layer where the flock layer is visible, and a second area formed by the adhesive layer where the adhesive layer is visible due to the elimination of part of the flock layer located on top of the adhesive layer due to an increase in temperature at said second area caused by action of a laser beam projected on that part of the flock layer, and wherein the motif is made up of a third area formed by material resulting from having heated the fibres of the flock layer until the fibres reach a molten state.

Appeal Br. (Claims App. i, iv).

REJECTIONS

On appeal, the Examiner maintains the following rejections[2]:

1. Claims 1, 2, and 6 are rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over Latos et al. (US 2005/0151302 A1, pub. July 14, 2005) ("Latos"). Final Act. 3.

2. Claims 3–5, 7, and 17 are rejected under 35 U.S.C. § 103(a) as obvious over Latos. *Id.* at 6.

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[2] The rejection of claim 1 under 35 U.S.C. § 112, second paragraph, was withdrawn by the Examiner. Answer 11.

3. Claim 8 is rejected under 35 U.S.C. § 103(a) as obvious over Latos in view of Hayashi and further in view of Casey (US 4,018,956, iss. Apr. 19, 1977) ("Casey"). *Id.* at 8.

4. Claims 1–3 and 5–8 are rejected under 35 U.S.C. § 103(a) as obvious over Malvar et al. (US 2008/0060669 Al, pub. Mar. 13, 2008) ("Malvar") in view of Gueret (US 2004/0018037 A1, pub. Jan. 29, 2004) ("Gueret"). *Id.* at 8.

DISCUSSION

Rejection 1.

The Examiner rejected claims 1, 2, and 6 as anticipated by, or in the alternative, obvious over Latos. Addressing claim 1, Appellants allege this rejection is in error on four bases. First, they assert that Latos does not teach an adhesive layer. Appeal Br. 8–11. Second, they contend that Latos does not suggest fibers having a melting temperature less than the degradation temperature of the associated adhesive. *Id.* at 12–18. Third, they allege that Latos does not disclose the flock "in an assembly position inside a vehicle." *Id.* at 19. Fourth, they state that Latos does not teach a motif made of a flock layer and a visible portion of adhesive. *Id.* at 19–20. Appellants present no separate argument regarding claims 2 or 6.

With regard to the first alleged error, the Examiner finds that pile fabrics made by a flocking process as disclosed by Latos will inherently comprise an adhesive layer and a support. Final Act. 5; *see also* Latos ¶ 18 ("the term 'pile' includes projecting fibers formed by shearing or napping, including . . . flocking and corduroy."). The Examiner asserts that Appellants' Specification provides that flocking is known to require an

adhesive applied on a support, over which adhesive layer short fibers called flock are placed in order to form a flock layer. Answer 11–12 (citing Spec. 1).

Appellants argue that an adhesive layer is not inherently disclosed because Latos teaches to use a number of pile fabrics some of which, such as corduroy, do not utilize an adhesive. Appeal Br. 9. This argument misses the mark. A teaching of one embodiment that omits a claimed element does not negate the teaching of another embodiment. *See generally Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989) ("That the [prior art reference] discloses a multitude of effective combinations does not render any particular formulation less obvious."); *see also Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1377 (Fed. Cir. 2005) (holding, in the context of anticipation, that "specific disclosure, even in a list," is a sufficient disclosure). Thus, the teaching of a corduroy embodiment does not negate Latos' teaching relating to flocking. In view of the foregoing, Appellants have failed to demonstrate reversible error in the Examiner's finding that an adhesive layer is inherently taught by Latos.

For their second argument, Appellants contend that Latos does not teach a flock layer where "the melting or combustion temperature of the fibers forming the flock layer is less than the degradation temperature of the adhesive forming the adhesive layer." Appeal Br. 12–18.

In support of the anticipation rejection, the Examiner finds that, while the claimed temperature relationship is not explicitly disclosed, it is inherent to the disclosure of Latos. Appellants assert that the claimed temperature relationship is not necessarily present and is therefore not inherently disclosed by Latos. *Id.* at 12. Appellants assert that a prior rejection

presented a hypothetical combination where the proposed adhesive had a degradation temperature lower than that of the fiber. *Id.* at 13.

"Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient to establish inherency." *Scaltech Inc. v. Retec/Tetra L.L.C.*, 178 F.3d 1378, 1384 (Fed. Cir. 1999). Here, the Examiner has not shown that there is any teaching of Latos that establishes that the claimed temperature relationship is necessarily present. Accordingly, we do not sustain the rejection of claims 1, 2 and 6 on the basis of anticipation.

In regard to the obviousness rejection, Appellants assert that there is no factual support for the Examiner's finding that the claimed relationship is obvious in view of Latos. Appellants additionally rely upon the disclosure of Lion (not relied upon by the Examiner in the instant rejection) for the proposition that both the fibers and adhesive are typically removed or degraded in the area subject to laser etching. Appeal Br. 15–18.

In this regard, the Examiner determined as follows:

> [F]or a flocked fabric to be successfully laser etched by Latos' method, the melting or combustion temperature of the flock fibers must be less than the degradation temperature of the adhesive. If the adhesive had a degradation temperature less than the melting or combustion temperature of the flock fibers, said fibers would not be successfully etched. Rather, the flock would be lost due to degradation of the adhesive binding the flock to the substrate.

Final Act. 5. The Examiner further determined that "the obviousness rejection is based upon the direct teachings of Latos reference,

scientific principles regarding thermal properties of materials, and the definition of a flocked fabric structure." Answer 14.

Latos teaches an embodiment where laser etching proceeds until "no meaningful fiber height remains." Latos ¶ 36. It teaches another embodiment where "the fiber height is reduced by at least 90% within the illuminated area." *Id.* This fiber reduction is taught to be achieved by application of laser energy that results in melting or burning of the fibers. *Id.* ¶¶ 44, 45. The feel of the fabric is taught to be maintained. *Id.* ¶ 37 ("Preferably, at least 25% of the area within each given square inch of the pile fabric 1 is maintained at the original fiber height *to preserve the hand of the fabric*") (emphasis added).

Further, Figure 4 of Latos depicts a fabric where some fibers (51) are shortened and some are removed entirely in areas (60) where laser energy is applied. Fibers adjacent to the areas (60) where laser energy is applied maintain their position while the base layer remains stable for all fibers regardless of etching.

The foregoing, taken as a whole, suggests that the base of the fiber remains in place and the adhesive is unaffected by heat from the etching process.

Given such disclosures and the Examiner's findings, Appellants have failed to demonstrate reversible error in the Examiner's determination that a person of ordinary skill in the art would have chosen an adhesive that remains stable during manufacturing.

Appellants' third argument in support of their allegation of error in the rejection of claims 1, 2, and 6 is that Latos does not teach the flock "in an assembly position inside a vehicle." Appeal Br. 19.

Initially, the Board observes that the term in question appears merely to state an environment of use. "An intended use or purpose usually will not limit the scope of the claim because such statements usually do no more than define a context in which the invention operates." *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 320 F.3d 1339, 1345 (Fed. Cir. 2003).

Further, as the Examiner notes, Appellants challenge the Examiner's findings with respect to whether Latos explicitly teaches flocking "in an assembly position" (in support of their argument that the anticipation rejection is erroneous) but not whether such positioning would have been obvious. Answer 16–17; Appeal Br. 19. Accordingly, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv) (2012).

Additionally, Appellants have not established reversible error in the Examiner's determination that Latos' teaching regarding use of materials in "vehicle interiors," Latos ¶ 7, would have taught a person of ordinary skill in the art that the instant flock coating could be used in an assembly position inside a vehicle. Final Act. 6.

Appellants' fourth basis for appeal of the first rejection is that Latos does not teach the following limitation:

> an indicative, decorative, or indicative and decorative motif located on a visible surface of said inner flock coating, wherein at least part of the motif comprises a combination of at least two visually different areas, a first area formed by part of the flock layer where the flock layer is visible, and a second area formed by the adhesive layer <u>where the adhesive layer is visible due to the elimination of part of the flock layer</u>

Appeal Br. (Claims App. i) (emphasis added). More particularly, Appellants assert that Latos "never discusses creating designs having an adhesive layer visible." Appeal Br. 20.

In response, the Examiner notes that Latos teaches to etch a graphic or text in a pile fabric so that no fibers remain in some portions of the flocking. Answer 17. Specifically, Latos provides that "[t]he sculpting can be selected to impart graphics, text, designs, logos, or patterns in the pile fabric." Latos ¶ 11. Latos further provides that fibers may be shortened such that "no meaningful fiber height remains after illumination with the laser." Latos ¶ 36, and that "substantially all of the fibers 51 in a region can be shortened," *id.* ¶ 37.

In view of the disclosure that the fibers of Latos may be etched so that "no meaningful fiber height remains," Appellants' contention that Latos fails to teach a visible adhesive layer is not persuasive of reversible error. Accordingly, we sustain the Examiner's rejection on the basis of obviousness.

Rejection 2.

The Examiner rejected claims 3, 5, 7, and 17 as obvious over Latos. Final Act. 5. Appellants present no arguments regarding claims 3, 5 and 7 separate from the arguments regarding claim 1, which are addressed above. Appellants do, however, present separate argument with regard to claim 17. Appeal Br. 20.

Claim 17 is to a flock coating with a motif having a first area with a visible flock layer, a second area with a visible adhesive area and "a third area formed by material resulting from having heated the fibres of the flock layer until the fibres reach a molten state." *Id.* (Claims App. iv).

Appellants note that "Latos teaches preventing lumps formed from melted ***fiber*** material." *Id.* at 20 (emphasis in original) (citing Latos ¶ 43). They argue that this amounts to a teaching away from the use of molten material to form a part of a motif. *Id.*

The Examiner observes that Latos provides that laser etching parameters "are selected to limit melting of meltable fibers below a threshold, which would form lumps of the material upon cooling." Latos ¶ 43. The following paragraph, however, teaches that

> for synthetic materials . . . illumination of the fibers can shorten the fibers through a melting of the fibers. As the laser energy impinges from above the pile fabric, the melted material tends to flow down to the base of the fabric, without bonding to adjacent fabrics. This assists in preserving the hand of the fabric.

Id. at 44. Additionally, Latos teaches that "[t]he melted material flows and causes a relocation of the dye molecules within the synthetic material, **thereby causing color enhancement**." Latos ¶ 46 (emphasis added).

Thus, the Examiner, finds, Latos does not teach away from melting but rather provides guidance as to how to avoid formation of lumps when using molten material. In view of the disclosure of Latos, Appellants have not established reversible error in the rejection at issue.

Rejection 3.

The Examiner rejected claim 8 as obvious over Latos in view of Casey. For their appeal of this rejection, Appellants rely upon their arguments set forth in regard to the first rejection. Appeal Br. 21. As these arguments have not been found persuasive, this rejection is sustained for the reasons set forth above.

Rejection 4.

The Examiner rejected claims 1–3 and 5–8 as obvious over Malvar in view of Gueret. This is an alternative basis of rejection for each of these claims. In view of the determinations above regarding Rejections 1–3, we need not reach this ground of appeal.

DECISION

The rejection of claims 1, 2 and 6 as anticipated is not sustained. The rejections of claims 1–8 and 17 as obvious are sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED